



# California Regional Water Quality Control Board

## San Diego Region



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November 3, 2005

Ms. Sandra Farrell  
Friends of Hedionda Creek  
1900 Esplendido Avenue  
Vista, CA 92084

In reply refer to:  
WPN:18-2002144.02:meanc

**Subject Site: San Marcos Highlands Project, San Marcos**

**RE: RESPONSE TO COMMENTS FROM FRIENDS OF HEDIONDA CREEK ON  
DRAFT 401 CERTIFICATION FOR THE SAN MARCOS HIGHLANDS  
PROJECT IN SAN MARCOS, AGENDA ITEM #11**

Dear Ms. Farrell,

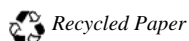
This is in response to your letter dated May 6, 2005 raising concerns about the draft Section 401 Water Quality Certification for the San Marcos Highlands project (File No. 02C-144). The following provides a discussion of your comments. Based on the assessment of your comments, no further changes to the conditions of the original draft certification are recommended.

**Comment 1:**

The public does not have an accurate description of the project. The project is different from the project described in DSEIR 90-13 and maps submitted to the community by KB Homes in December of 2004. For instance, in the March 15 PCR memo On Figure 5, San Marcos Highlands Proposed Mitigation Measures, both the Eucalyptus Removal and Active use park are shown in the same color and appear to be located in the in the northern (headwaters) area of the project. Has the active use park been moved from the location described in DSEIR 90-13? Is the active use park taking the place of the Eucalyptus grove? Will the maintenance of the park require the use of pesticides and fertilizers and if run off from the park will impact Agua Hedionda Creek? Also, there is no dimension for the inside of the "large 8'-high culvert". Is the 8-foot dimension the inside opening or the exterior dimension? What are the length and width dimensions? Is it a soft bottom?

Unfortunately there is insufficient detail within the draft permit for the public to review and comment on how these changes may impact water quality. Some detailed project information appears to be in a memo dated March 15, 2005 from PCR, the applicant's consultant. We do not know how heavily staff relied on the information in this memo when creating the requirements for the Draft 401 Certification.

***California Environmental Protection Agency***



**Response:**

Most project descriptions continue to be refined after the CEQA process has concluded, as is the case with the San Marcos Highlands project. Changes inevitably come about as part of the regulatory permitting process where the project applicant must satisfy numerous permitting agencies and their concerns.

The active use park is still located in it's original location, outside of the creek's riparian corridor.

The maintenance of the park would be regulated under the existing Municipal Storm Water Permit Order No. 2001-01, and be subject to the discharge prohibitions contained within the permit. The City of San Marcos Stormwater Ordinance also establishes minimum BMP requirements for the use of pesticides and fertilizers for plant care gardening and landscaping.

The culvert dimensions are a 10-foot by 12-foot arched, soft bottomed, culvert, approximately 159-feet long.

Friends of Hedionda Creek has been provided with the latest October 20, 2005 project description. The changes to the San Marcos Highlands project description have further reduced the projects impacts to the environment, from the original project description. There is less impact to aquatic resources, Agua Hedionda Creek is being restored to a more natural hydrologic regime, Structural Treatment Best Management Practices will be implemented consistent with the New Development requirements of the Municipal Stormwater permit. Additionally, at the request of the wildlife agencies, the project has incorporated an east-west wildlife corridor into the northern border of the project which will provide connectivity for wildlife between large expanses of open space to the northwest and southeast.

**Comment 2:**

(2A) We are extremely concerned to see we still do not have a bridge type crossing of sufficient size to accommodate wildlife documented on the site or one that matches the existing crossing located ¼ mile downstream. As a result, we do not believe the permit satisfies one of the beneficial uses of Agua Hedionda Creek---it use for wildlife.

**Response:**

At the urging of the resource agencies, the bridge alternative was explored by the project applicant in the Army Corps CWA Section 404(b) Alternatives Analysis. It was determined that the bridge construction would result in additional impacts to jurisdictional areas and would require sewer lines to be suspended under the structure, posing an increased risk of damage to the line. The revised under-crossing plan at street A calls for a soft bottom 10-foot arched

culvert, where the sewer line, and other utilities are protected within the roadbed. The under-crossing consists of a low-flow channel to one side, which will allow a consistently dry area for wildlife passage.

The *Water Quality Control Plan for the San Diego Basin (9)* defines the Wildlife Habitat (WILD) beneficial use as follows:

“ Includes uses of water that support terrestrial ecosystems including, but not limited to, preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.”

As described in the October 2005 Habitat mitigation plan, the proposed restoration and enhancement of the main-stem of Agua Hedionda Creek will create a improved connected natural riparian corridor which will serve as improved habitat for a multitude of species, including an increase of potential habitat for endangered species such as the Leas Bells Vireo. The proposed mitigation will ensure that the WILD beneficial use of the creek will be preserved and enhanced.

**(2B)** We are concerned the proposed 8' high under-crossing will prevent deer and other large wildlife from getting access to water. As a result they may be forced onto the Las Posas Road, creating a hazard to vehicular traffic in the area.

We don't understand why the proposed under-crossing is so small. The existing Las Posas/Agua Hedionda Creek crossing, located downstream, in the Santa Fe Hills/Paloma development is a 38-foot wide x 20-foot high arch culvert (15'-9" clearance) with a soft bottom. According to the November 30, 2002, Mitigation Plan for the Las Posas Road Project, prepared by the Planning Associates for KB Homes, "The use of a soft-bottom arch culverts would maintain flows and connectivity above and below the creek crossing,. Preserving a soft bottom would ensure that subsurface storage and groundwater recharge are maintained at similar levels" ... "To reduce the potential for fragmentation habitats north and south of the crossing, a 38-foot wide by 20-foot high arched culvert (with soft bottom) will be utilized."

### **Response:**

In response to your concerns regarding the adequacy of the Street A under-crossing for the passage of larger wildlife species (Mule Deer), The Regional Board attended a meeting onsite with the applicants and Department of Fish and Game Wildlife Biologist Randy Botta. Mr. Botta has a great deal of experience with mule deer and the sizing of suitable under-crossings for them. It was his determination that the proposed culvert design would allow the passage of mule deer. Regional Board staff will defer to the Department of Fish and Game on this issue.

(2C) Most of the project that impacts Agua Hedionda Creek the most is located within the unincorporated area of the County and will require annexation before the project can be built. Under the existing County General Plan the most of the development foot print of the Highlands is 1 dwelling unit per 2 or 4 acres (slope dependant). Under the County's existing General Plan the same area would yield approx. 30 homes- far less than the number being proposed on the development bubble within Planning Area 1, located on the east side of the creek. Under the County's plan it is possible to place all the dwellings on one side of the creek and eliminate the need for a creek crossing. The Board should note that under GP2020, due to the sensitive resources on the site the County has further reduced the density and give the site a designation of 1 dwelling unit per 10 acres.

**Response:**

The Regional Board's authority does not extend to land use decisions, including the zoning standard that should apply for the project. The project applicant is attempting to permit this project under a tentative map filed with the City of San Marcos, and is expecting to annex the County portion of the project into the City of San Marcos .

In the September 2005 CWA 404(b) alternatives analysis the applicant looked at the alternative of developing the project under the County Standard zoning and concluded that for the project to be financially viable, it would require the maximum number of lots (45) to be constructed. Under this scenario a crossing of the creek would be required, and impacts to resources, instead of being clustered, would be spread across the entire 204-acre site.

(2D) Because of the proximity of Las Posas Road, a wildlife corridor and the development footprint relation to Agua Hedionda Creek, we are concerned at the long-term impacts of major roadways to water quality within Agua Hedionda Creek. The City's Circulation Element currently shows Las Posas running through the project, along the wetlands, and terminating at Buena Creek Road. Since roads historically have a negative impact to water quality we cannot tell from the document if there is long-term planning by the RWQCB regarding the cumulative impacts of this project and its contribution to the extension of Las Posas Road to Buena Creek Road. No EIR is available for Las Posas Road and according to the Army Corps letter dated August 15,2001, Las Posas is being piecemealed to Buena Creek. We believe this piecemealing of Las Posas Road will have negative impacts to the water quality of Agua Hedionda Creek. No evidence has been provided stating staff has considered this in its permit process.

**Response:**

The extension of Los Posas Road was addressed by the Applicant in a cumulative impact analysis provided in the June 2004 Updated Permit Application. It has been argued that the project as proposed has independent utility in extending Los Posas Road into the project. The

further extension of Los Posas Road will require additional CEQA documentation and environmental permitting which will be addressed should the extension of the road become a reality in the future.

**Comment 3:**

We believe the minimum Monitoring Program should assess and address invasive species that could impact water quality. Since the completion on the Santa Fe Hills project there has been an invasion of Arrundo within Agua Hedionda Creek, adjacent to the Santa Fe Hills development. Since its location is at the storm drain outfall, it appears the Arrundo has been washed from the development, through the storm drain and into the creek. Arrundo is a highly invasive plant species that reduces native species and contributes to degradation of water quality.

**Response:**

The tentative 401 certification Condition No. C.9 addresses this comment. This condition requires that:

“Mitigation areas shall be maintained free of perennial exotic plant species including, but not limited to, pampas grass, giant reed, tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species shall not occupy more than 5 percent of the onsite or offsite mitigation areas.”

This condition, and the requirements contained in the Habitat will ensure that exotic species are controlled throughout the 5 year mitigation monitoring cycle and that native species will have sufficient time to establish and mature to the point that they will not be out-competed by exotic and invasive species.

**Comment 4:**

Finally, we would like to bring to your attention a comment made by Gary Hill, a resident living adjacent to the site and to the wetlands. Mr. Hill, in a recent e-mail communication, said the northern long finger section, running from the northern project boundary to Buena Creek Road, containing the mitigation areas, has existing easements for roads and utilities. Hill expressed concern that these are dominate easements, within the headwaters of the creek, are owned by third parties, unrelated to the underlying property owner. The Draft Certification does not appear to address this. Since these easements are in wetland areas covered by the permit, how will the permit address this easement in the wetlands?

**Response:**

The conceptual mitigation proposal for the project originally put forth by the Applicant, and endorsed by the Regional Board, would have placed the entire restored and enhanced main-stem

of Agua Hedionda Creek, under the protection of a conservation easement in perpetuity. Additionally, the largest tributary of the creek would be preserved in perpetuity. It was the This would have ensured that any potential future project, such as the extension of Los Posas Road would have to avoid any impact at all to the those sensitive resources.

When the Regional Board reviewed the August 2005 Draft Habitat Mitigation and Monitoring Plan, it became apparent that Mr. Hill's comment was indeed correct. The proposed enhancement portion of the plan in the northern finger of the project was encumbered with existing utility and road easements, and that Vista Irrigation District was actively using their easement which contains an existing water line. It is therefore not possible for this 2.3 acres of the creek to be placed under a conservation easement as required by Condition C.5 of the Certification.

KB Home is willing to perform the enhancement activities in these areas even though they will not receive formal mitigation credit for these activities. KB Home has recently sent letters to those in possession of pre-existing easements requesting that they vacate their easements. The Regional Board is unaware if any easement holders have responded to these requests.

If KB Home has any success in removing any or all existing easements to the area in question, the tentative Certification would require them to place that portion of the site under a conservation easement.

Questions pertaining to this letter should be directed to Christopher Means at 858-637-5581 or by email at [cmeans@waterboards.ca.gov](mailto:cmeans@waterboards.ca.gov). Written correspondence pertaining to this letter should be directed to the following address:

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San Diego Region  
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CC:

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